FILE COPY

No. 150

Office-Supreme Court, U.S.
FILED
JUN 23 1958
Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1958.

DOUGLAS McCRARY et al.

v.

ALADDIN RADIO INDUSTRIES, INC., and
ALADDIN INDUSTRIES, INC.

PETITION FOR WRIT OF CERTIORARI

**To the Court of Appeals of Tennessee,
Middle Section, at Nashville.**

WILLIAMS, HARWELL, HOWSER & THOMAS,
1101 Stahlman Building,
Nashville, Tennessee,
MOORE, CROWNOVER, BRANSTETTER, FOLK & FISHER,
4 Stahlman Building,
Nashville, Tennessee,
COOPER, MITCH, BLACK & CRAWFORD,
1329 Brown-Marx Building,
Birmingham, Alabama,
Counsel for Petitioners.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

INDEX.

	Page
Jurisdiction	2
Questions presented	2
Constitutional provisions and statutes involved	4
Statement	5
The reasons for granting the writ	13
Conclusion	19
Appendix A—Opinion of Court of Appeals of Tennessee	21
Appendix B—On petition to rehear	37

Cases Cited.

Aladdin Industries, Inc., v. Associated Transport (Davidson County Chancery Court)	18
Aladdin Radio Industries, Inc., v. Adkins Transfer Co., 28 Labor Cases 69,387, at p. 89,569	10, 18
Churchwell v. Callens, 252 S. W. 2d 131, at 133	15
Cliea Robinson d/b/a Smithville Freight Lines, v. Hoover Motor Express Company, Inc., et al. (Dekalb County Chancery Court)	18
Garner v. Teamsters Union, 346 U. S. 485, 74 S. Ct. 161	13
General Drivers, etc., v. American Tobacco Co., 348 U. S. 978	13
Georgia Highway Express, Inc., v. C & D Motor Delivery et al. (Hamilton County Chancery Court)	18

Howell v. Thompson, 130 Tenn. 311, 324, 170 S. W. 252 12

Jakes Foundry Company v. Tennessee-Carolina Transport et al, (Davidson County Chancery, Docket No. 80312, now on appeal in the Court of Appeals of Tennessee) 18

Keith-Simmons, Inc. v. Arnold Ligon Truck Lines et al. (Davidson County Chancery, Docket No. 80417) 18

Local 298 v. County of Door, ... U. S. ..., ... (May 4, 1959) 13

Nashville Corporation v. United Steelworkers of America, 187 Tenn. 440, 215 S. W. (2d) 818..... 15

National Association for the Advancement of Colored People v. State of Alabama, 357 U. S. 458, 78 S. Ct. 1163 17

Oliver et al. v. Local or Subordinate Lodge No. 656, 182 Tenn. 236, 185 S. W. 2d 525.....11-12

San Diego Building Trades Council, etc., v. Garmon, ... U. S. ..., ..., 79 S. Ct. 773, 779..... 14

Scull v. Commonwealth of Virginia, ... U. S. ..., 79 S. Ct. 838, ... 17

Staub v. City of Baxley, 355 U. S. 313, 320; 78 S. Ct. 277, 281 17

Teamsters, Chauffeurs, Helpers & Taxicab Drivers v. Kerrigan Iron Works, Inc., 353 U. S. 968 .3, 8, 11, 13, 17, 18

United Mine Workers v. Arkansas Oak Flooring Co., 351 U. S. 62, 75.....13, 14

Weber v. Anheuser-Busch, Inc., 348 U. S. 468, 75 S. Ct. 480 13

Statutes Cited.

National Labor Relations Act:
Sec. 7 13
Sec. 8 (b) (4) 13
Tennessee Code Annotated, Sec. 65-512, 514 4
28 U. S. C., Sec. 1257 (3) 2
29 U. S. C., Sec. 141 3
29 U. S. C., Sec. 157 4
49 U. S. C., Sec. 301 ..... 3, 4

Constitution Cited.

Section 1 of the Fourteenth Amendment to the Constitution of the United States 4

Textbooks Cited.

12 Am. Jur. 408 15
Gibson's "Suits in Chancery," 5th Ed. 15

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1958.

DOUGLAS McCRARY et al.

v.

ALADDIN RADIO INDUSTRIES, INC., and ALADDIN INDUSTRIES, INC.

PETITION OF DOUGLAS McCRARY, LUTHER CARROLL, L. H. BRADLEY, DANZEL C. PEDIGO, MARVIN CAYLOR, M. M. BRATTON, JOE HEALD, FRED JOHNSON, CLYDE KENNEDY, CLYDE BOWEN, L. D. BENNETT, ALBERT BURNETT, JACK SHELTON, FLOYD DUNCAN, THOMAS MALLORY, R. C. WORKING, R. E. ODOM, T. A. HARGIS, DON VESTAL, AND LOCAL UNION NO. 327 OF THE TEAMSTERS, CHAUFFEURS, HELPERS AND TAXICAB DRIVERS, FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS OF TENNESSEE, MIDDLE SECTION, AT NASHVILLE.

Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Appeals of Tennessee, Middle Section, at Nashville, entered in the above on December 5, 1958.

These proceedings, although technically two cases, have been treated as a single matter by the courts below, and

by this Supreme Court in a prior appearance here as Case No. 976, October Term, 1956.[1] However, as there are actually two records in the Tennessee courts, the record in **Aladdin Industries, Inc.**, will be referred to as R. ...., and that in **Aladdin Radio Industries, Inc.**, as RA..... The opinion of the Court of Appeals of Tennessee, Middle Section (RS. 88), and its opinion on rehearing (RS. 123)[2] are attached hereto as Appendices A and B. A petition for certiorari to the Tennessee Supreme Court was denied by that Court without opinion on April 8, 1959.

JURISDICTION.

A decree of the Tennessee Supreme Court denying certiorari was entered on April 8, 1959. The decision of the Court of Appeals of Tennessee, Middle Section, thereby became a final judgment rendered by the highest Court of Tennessee in which decision could be had.

Jurisdiction rests upon 28 U. S. C., Section 1257 (3).

QUESTIONS PRESENTED.

The prior Petition for Certiorari (No. 976, October Term, 1956) stated the questions presented thus:

1. Does a State court of equity have jurisdiction (by mandatory injunction) to compel truck drivers of an interstate common carrier to cross a peaceful picket line lawfully advertising existence of a strike against an interstate employer by employees of that employer?

2. Does a State court of equity have jurisdiction (by mandatory injunction) to compel truck driver members of

---

[1] Decided as No. 116, October Term, 1957, 355 U. S. 8, 78 S. Ct. 12.

[2] 323 S. W. 2d 222, ... Tenn. .... The original certified record was filed with No. 976, October Term, 1956. The record of the proceedings that have transpired since the decision of this Court are herein designated as RS. ....

one union to cross a peaceful, lawful picket line of another recognized union, when the truck drivers are engaged in interstate employment under a collective bargaining contract providing that a refusal to go through such a picket line of another union shall not constitute a breach of the contract or grounds for discharge?

3. Does the refusal by members of one union, engaged as interstate truck drivers, to cross a peaceful, lawful picket line of another union, constitute protected activity under the National Labor Relations Act, as amended? (29 U. S. C. 141 et seq., hereinafter referred to as the Act.)

4. Has the field of relief against refusal by truck drivers employed by interstate carriers to cross a peaceful picket line (of their own or of other unions) been pre-empted by the Congress, either by (a) the Act, or by (b) the Interstate Commerce Act, Part II, 49 U. S. C. 301 et seq.?

5. Does a State court of equity have jurisdiction to compel crossing a peaceful picket line as posed in questions "1" through "4" by virtue of State law requiring common carriers to serve customers without discrimination?

The above questions, in effect, remain in the case. To them are now added:

6. Has the mandate of this Supreme Court of the United States in Case No. 976 been correctly applied by the Court of Appeals of Tennessee?

7. Has the Court of Appeals of Tennessee disregarded and incorrectly applied the decision of this Court in **Teamsters, Chauffeurs, Helpers & Taxicab Drivers v. Kerrigan Iron Works, Inc.**, 353 U. S. 968?

8. After remand from this Supreme Court, do the latest opinions and decree of the Court of Appeals of Tennessee to the extent they hold for the first time that an injunction issued by a Tennessee court without jurisdiction of the

subject matter is valid until reversed, cannot be attacked collaterally, and if violated gives rise to liability in contempt (contrary to the established law and procedures of Tennessee and contrary to the understanding of the parties upon which these proceedings were initially tried through the courts of Tennessee,) constitute a novel procedural requirement of which petitioners could not fairly be deemed to have been apprised?

9. Do such opinions and decree represent an attempt to thwart ultimate review by this Supreme Court of Federal rights and claims duly asserted in the courts of Tennessee?

10. Does the pattern of the decisions of the courts of Tennessee in this Proceeding reveal a course of conduct designed to deprive petitioners of due process and equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Constitutional and statutory provisions involved here are Section 1 of the Fourteenth Amendment to the Constitution of the United States; the National Labor Relations Act as amended by the Labor Management Relations Act of 1947, 29 U. S. C. 157 et seq., 61 Stat. 140; the Interstate Commerce Act, Part II, 49 U. S. C. 301, 316 (d), 322 (b), 54 Stat. 919; and the Tennessee Statutes relating to common carriers, T. C. A. 65—512, 514. (See App. E to Petition for Certiorari in No. 976, Oct. Term, 1956.)

STATEMENT.

I.

Petitioners are eighteen individual truck drivers, Teamsters Local Union No. 327 and its President, all of Nashville, Tennessee. They have been found in contempt of temporary, mandatory injunctions issued by the Chancery Court of Davidson County, Tennessee, and individual petitioners have been sentenced to jail. The Chancellor's decrees ordered performance of common carrier services to and from interstate industries at which peaceful, lawful picketing was in progress. This picketing was conducted by the United Steelworkers of America as a bargaining agency certified by the National Labor Relations Board.[3]

The Chancery Court by decree of April 19, 1955 (R. 44), in effect determined that the picketing was peaceful and held individual truck drivers in contempt for refusing to cross the lawful, peaceful, picket line conducted by United Steelworkers of America at an interstate industry. Local 327 and its President, Vestal, were found in contempt for having peacefully picketed one of the interstate industries

---

[3] Aladdin Industries, Inc., and Aladdin Radio Industries, Inc., are affiliated companies occupying common premises. They utilize common entrances to those premises. The production and maintenance employees of Radio are represented by the United Steelworkers of America and its Local 5003, as certified bargaining agency. These employees struck for a new agreement at the expiration of their then current contract. Similarly, the production and maintenance employees of Industries are represented by United Steelworkers of America and its Local 4802. These employees were not on strike and did not observe the picket line. However, the individual petitioners now before this Court for the second time, as truck drivers refused to cross the lawful, peaceful, picket line. First Industries, then Radio, each obtained a mandatory injunction from the State court requiring performance of interstate carrier service to and from the two interstate industries.

The detailed background of this litigation in the courts of Tennessee appears in the Petition for Certiorari in No. 976, October Term, 1956.

involved with a picket sign reading: "The Office Employees of This Plant Do Not Belong to the Union, We Ask the Public Not to Patronize the Plant. We Ask the Office Employees of This Plant to Join the Teamsters Union" (RA. 475, 464). This sign was readable by truck drivers and others approaching the plant (RA. 471). However, the Local and Vestal were both found in contempt for having conducted this peaceful picketing on the ground that it did not constitute, according to the parochial standards of the State court, utilization of a bona fide picket sign and therefore violated that court's injunction (RA. 83).

The applicable collective bargaining contract of the Teamsters provided that the individual petitioners (members of Local 327) should not be required to cross a lawful, peaceful, picket line such as that of the Steelworkers here involved. At all times in the injunction proceedings, the complaining parties insisted (and, as we have noted, the Chancellor found) that the picketing involved was peaceful and that the individual truck drivers could have, had they so wished, safely and readily crossed the picket line (RA. 676).

By appropriate pleadings,[4] petitioners originally duly presented, to the Tennessee Chancellor, to the Court of Appeals of Tennessee, and to the Supreme Court of Tennessee, the Federal questions which are involved. In substance those questions were: (a) the exclusive primary jurisdiction of the National Labor Relations Board over peaceful picketing of interstate industries and (b) the preemptive withdrawal from State courts of jurisdiction over the subject matter of the injunction proceedings.

---

[4] R. 46, 65, 112, 113, 185, 194; RA. 100, 102, 148, 170, 233, 241, 243, 268, 697, 705, 706.

II.

On petition for writs of certiorari to this Supreme Court (No. 976, October Term, 1956) petitioners did not initially discuss the question of whether, by the law of Tennessee, petitioners could be held in contempt of a void injunction issued without jurisdiction over the subject matter. No such issue had then been raised. By the established law of Tennessee and by the understanding of experienced members of the Tennessee bar on both sides of this very cause, an injunction so issued without jurisdiction of the subject matter traditionally has been considered as void, its violation not a contempt, and its terms subject to attack collaterally.

Indeed, throughout the proceedings in the courts of Tennessee and prior to the filing of the initial Petition for Certiorari in No. 976, respondents never suggested that the law of Tennessee was otherwise. Not until they filed their answer to that Petition did respondents present the argument, before then neither urged by the bar of Tennessee nor recognized by its courts. At that late hour, the Answer suggested:

> "Even if a court lacks jurisdiction to enter an order, an aggrieved party must assert its challenge by taking the steps which are necessary and proper to secure reversal. It must not, by flouting the court and its decree, invite a sentence for contempt as the device for testing jurisdiction."
>
> Memorandum of Respondents in Answer to Petition for Writs of Certiorari, pp. 14-15, No. 976, October Term, 1956.

In the courts of Tennessee and prior to the filing of that Answer, respondents' position had been precisely to the contrary. As we stated in Petitioners' Memorandum Reply Brief in Support of Petition for Writs of Certiorari in No. 976 (p. 3 et seq.):

"Respondents' briefs and arguments to the Court of Appeals of Tennessee, and to the Supreme Court of Tennessee in opposition to certiorari from that Court, were prepared by eminently able practitioners at the Tennessee bar. They did not contain a single word of suggestion that petitioners would be in contempt even if the injunction were to be found void for want of jurisdiction of the subject matter. Those briefs and arguments did not contain a single citation of the **United Mine Workers** case (330 U. S. 258), or a single reference to principles that case may make applicable to Federal courts. On the contrary, those briefs and arguments, in the main, were directed to support of the Chancellor's jurisdiction. That was the major issue below—an issue completely resolved against respondents by **Kerrigan.**[5] Respondents' unsupported suggestion, now, that the doctrine of the United Mine Workers' case is somehow involved, comes not only late, but frivolously.

"Tennessee's law governs the disposition of the judgments of contempt; it differs materially from Respondents' characterization of **United Mine Workers.**

"The law of Tennessee, recognized by all parties below and by all courts below, is clear:

> 'If the Court is without jurisdiction of the subject matter in which it is undertaking to proceed, its orders are void. **An injunction made in respect to a subject-matter beyond the jurisdiction of the Court is a mere nullity, and is binding on no one'** (emphasis supplied).
>
> **Howell v. Thompson,** 170 S. W. 253, 256."

Before the filing of the Petition for Certiorari in No. 976, the Brief of Respondents in the Tennessee Supreme

---

[5] *Teamsters, etc. v. Kerrigan Iron Works,* 353 U. S. 968.

Court had also expressly recognized the right of collateral attack on a void injunction, stating:

> "Propositions of Law.
>
> "1. The injunction granted in this case was valid on its face and was within the traditional and customary jurisdiction of the chancery court. **Unless the contrary is clearly shown,** it is to be assumed that the court had jurisdiction and that the injunction was properly issued. This is particularly true **in the present case where a collateral attack is being made on the jurisdiction of the court by parties who wilfully violated the injunction. The burden of showing invalidity is on those convicted of contempt.**
>
> Nashville Corporation v. United Steelworkers, 187 Tenn. 444, 215 S. W. 2d 818" (emphasis supplied).

That brief also explained:

> ". . . . **The only possible question remaining for this [Supreme Court of Tennessee] Court to consider on petition for certiorari is whether or not the injunction which the appellants were conclusively found to have violated was void for lack of jurisdiction.**"
>
> Reply Brief and Argument on Behalf of Aladdin Industries, Inc., in the Supreme Court of Tennessee, pp. 4 and 3.

Actually the availability of direct appeal from a judgment of such a void order was expressly recognized by the Tennessee Court of Appeals, not only as the law of Tennessee generally, but more particularly as the law of the present cases. In denying certiorari to review the chancellor's assertion of jurisdiction at an early stage of these proceedings, the Court of Appeals of Tennessee held them to be within the Chancery Court's jurisdiction, adding, however:

"But if this conclusion is erroneous, and if the Chancellor did not have jurisdiction to grant the injunction or enter the order complained of, it does not follow that petitioners are entitled to writs of certiorari and supersedeas. To entitle them to such writs, not only must the lower court have acted outside or in excess of its jurisdiction but also there must be no other plain, speedy or adequate remedy.

"It appears that petitioners have another plain, speedy and adequate remedy. **If a judgment should be entered against them in this ancillary contempt proceeding, such judgment would be final and appealable as of right, even though the principal case is still pending.** B. F. Steif Jewelry Co. v. Walker, 36 Tenn. App. 427, 256 S. W. (2d) 392.

"Having this remedy of appeal, petitioners are not entitled to the writs of certiorari and supersedeas . . ." (Emph. supp.)

Aladdin Radio Industries, Inc., v. Adkins Transfer Co., 28 Labor Cases 69,387, at p. 89,569. (See entire Opinion set out in Appendix G, page 52, Petition in No. 976, Oct. Term, 1956.)

III.

This Supreme Court granted the writ of certiorari, vacated the prior decrees of the Court of Appeals of Tennessee, and remanded the cases per curiam as follows:

"The petition for writ of certiorari is granted. The judgment of the Court of Appeals of the State of Tennessee, Middle Division, is vacated and the case is remanded for consideration in light of Teamsters, Chauffeurs, Helpers & Taxicab Drivers etc., v. Kerrigan, 353 U. S. 968, 77 S. Ct. 1055, 1 L. Ed. 2d 1133.

"Mr. Justice Black took no part in the consideration or decision of this case."[6]

355 U. S. 8, 78 S. Ct. 12.

IV.

Proceedings Subsequent to Remand by Supreme Court of the United States.

Subsequent to the opinion of and remand from this Supreme Court of the United States, respondents moved the Tennessee Court of Appeals for instructions regarding compliance with the mandate. The Court of Appeals called for briefs and argument. Its opinion and decree were entered on August 6, 1958, holding (1) that the subject matter of the suit was **not** pre-empted by the Federal Act, and was within the jurisdiction of the Tennessee Chancery Court; (2) that the **Kerrigan** case does not govern and is to be distinguished; and (3) that irrespective of whether or not the Chancellor had jurisdiction of the subject matter, he had jurisdiction to grant a temporary injunction preserving the status quo, and to punish for its violation, even if void. On August 16, 1958, petitioners filed a petition to rehear outlining that the Court of Appeals had erroneously applied the mandate of the Supreme Court of the United States, *and had ignored*, among others, **Oliver et al. v. Local or Subordinate Lodge No. 656**, 182 Tenn. 236, 185

---

[6] The mandate from this Court to the Court of Appeals provided:

"On consideration whereof, it is ordered and adjudged by this Court that the judgments of the said Court of Appeals in this cause be, and the same are hereby vacated with costs.

"It is further ordered that Douglas McCrary et al. recover from Aladdin Radio Industries, Inc., et al ($100.00) for their costs herein expended and have execution therefor.

"It is further ordered that this cause be, and the same is hereby, remanded to the Court of Appeals of Tennessee, Middle Division, for consideration in light of Teamsters v. Kerrigan, 353 U. S. 968."

S. W. 2d 525, which had reiterated the law of Tennessee as follows:

> "'. . . **our State Courts are without jurisdiction of controversies under the National Labor Relations Act,** 29 U. S. C. A., sec. 151 et seq., and it follows, therefore, that **any order that we might enter except that of dismissal for lack of jurisdiction, would be void.** Manning v. Feidelson, supra, 175 Tenn. at page 578, 136 S. W. (2d) 510.'" (Emph. supp.)

The Petition for Rehearing once more repeated that when these cases had been first decided by the Court of Appeals, there had been no insistence by counsel for respondents, or intimation in the opinion of the Court, that in Tennessee a void injunction could serve to support convictions of contempt.

On December 5, 1958, the Court of Appeals filed its opinion overruling the petition to rehear. This opinion stated that (1) the above quoted portions of the **Oliver** case (and the **Manning** case) represented general expressions of opinion, and were authority for the cases decided but were not authority for another case; and (2) the language of Chief Justice Grafton Green in **Howell v. Thompson,** 130 Tenn. 311, 324, 170 S. W. 252:

> "If the court is without jurisdiction of the subject-matter in which it is undertaking to proceed, its orders are void. An injunction made in respect to a subject-matter beyond the jurisdiction of the court is a mere nullity, and is binding on no one. **It may be disregarded.** State v. Ragghianti, 129 Tenn. 560, 167 S. W. 689.
>
> "If a court, having issued injunctive orders in a matter entirely beyond its jurisdiction, undertakes to enforce these orders by contempt process, such process may undoubtedly be superseded under sections 5737,

5738, and 6348 of Shannon's Code, for contempt process is capable of enforcement quite active in its nature." (Emphasis supplied.)

was also a general expression of mere opinion in that case, and was not authority in another case.

On April 8, 1959, without opinion, the Supreme Court of Tennessee denied a writ of certiorari to review the latest action of the Tennessee Court of Appeals.

THE REASONS FOR GRANTING THE WRIT.

1. The decision below is, we respectfully submit, directly in conflict with this court's holding in **Teamsters, Chauffeurs, Helpers and Taxicab Drivers v. Kerrigan Iron Works, Inc.**, 353 U. S. 968,[7] and incorrectly applied the mandate of this Court in the present case.[8]

Tennessee's Chancellor had no jurisdiction to decide whether respondents' "conduct in this dispute violates § 8 (b) (4), is protected by § 7, or is covered by neither provision of the Labor Act. Those are questions for the Board to determine in a proper proceeding brought before it."[9]

---

[7] The decision below is likewise contrary to *Garner v. Teamsters Union*, 346 U. S. 485, 74 S. Ct. 161; *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, 75 S. Ct. 480; *General Drivers, etc. v. American Tobacco Co.*, 348 U. S. 978; *United Mine Workers v. Arkansas Oak Flooring Co.*, 351 U. S. 62, 75.

[8] See Memorandum Reply Brief in Support of Petition for Writs of Certiorari in No. 976, October Term, 1956, Part II and Appendix A, setting out the substantial identity between the present case and *Kerrigan* as to parties (same Local), collective bargaining contract provisions involved, relief sought and granted in the Tennessee court, and Federal issues raised.

[9] *Local 298 v. County of Door*, ... U. S. ..., ..., 79 S. Ct. 844, 847. Throughout this litigation, respondents have labored, as a basis for Tennessee's courts to act here, the argument that respondents' action in respecting a peaceful picket line at an interstate industry is neither protected nor prohibited by the Act. It is by now

2. The Court of Appeals of Tennessee has introduced, adopted or approved—mid-way in this litigation—a new concept of the law of Tennessee. By that new concept a Chancery Court of Tennessee, though without jurisdiction of the subject matter, may as of now issue a temporary injunction and punish in contempt for its violation. This change in judicial position has been made by the Court of Appeals in disregard of repeated opinions of the courts of Tennessee that (1) a void judgment binds nobody and may be disregarded, and that (2) matters within the jurisdiction of the National Labor Relations Board are beyond that State's courts' jurisdiction so that any order entered with respect to such-like by a Tennessee court, other than a dismissal for lack of jurisdiction, would be void. The Court of Appeals cited no Tennessee decision applying the doctrine of the **United Mine Workers** case, supra, or holding a party in contempt of an order entered without jurisdiction over the subject matter.

By the established law of Tennessee, as has been noted, an injunction so issued without jurisdiction of the subject matter is void, its violation is not a contempt, and the injunction may be attacked collaterally:

> **"If the attack is successful, the fiat was utterly void for want of jurisdiction of the judge awarding it and disobedence of the injunction is not a contempt.**

---

finally clear, however, that the State's jurisdiction with respect to this action of respondents has been displaced:

> "At times it has not been clear whether the particular activity regulated by the States was governed by § 7 or § 8 or was, perhaps, outside both these sections. But courts are not primary tribunals to adjudicate such issues. It is essential to the administration of the Act that these determinations be left in the first instance to the National Labor Relations Board. What is outside the scope of this Court's authority cannot remain within a State's power and state jurisdiction too must yield to the exclusive primary competence of the Board." *San Diego Building Trades Council, etc. v. Garmon*, ... U. S. ..., 79 S. Ct. 773, 779.

Howell v. Thompson, 130 Tenn. 311, 170 S. W. 253; 12 Am. Jur. 408, Sec. 26, 17 C. J. S., Contempt, Sec. 14, p. 19; Gibson's Suits in Chancery, Art. 814, note 43.

"A void Judgment is no judgment at all and binds nobody." (Emphasis supplied.)

Churchwell v. Callens, 252 S. W. 2d 131, at 133.

The principle until now followed by the courts of Tennessee and cited above by the Tennessee court from **12 Am. Jur. 408**, reads, to the extent applicable:

"The only legitimate inquiry in a contempt proceeding, based upon the violation of an injunction, is whether the court granting it had jurisdiction of the parties and of the subject matter; the question whether the order was erroneous will not be considered. If the court had the jurisdiction required, the fact that its power was erroneously exercised does not render the injunction void, but only voidable on proper application; and, until set aside or revoked, it is entitled to implicit obedience. **Where, however, the court in granting the injunction acted without jurisdiction, a violation of the order which it assumed to make does not constitute contempt; no one is bound to obey such a decree and the court making it has no power to punish a disobedience thereof . . .**" (emphasis supplied).

Nashville Corporation v. United Steelworkers of America, 187 Tenn. 440, 215 S. W. (2d) 818, to which the Court of Appeals made reference, does not relate to a void injunction issued without jurisdiction of the subject matter. The opinion deals only with the necessity of obeying possibly irregular or erroneous—as distinguished from void—judgments. Gibson's authoritative "Suits in Chancery," 5th ed., by which Tennessee courts are guided, unequivocally declares the Tennessee law:

"As to the efficacy and probative force, judgments and decrees are of three sorts:

"1. **Valid Judgments and Decrees**, being those based on jurisdiction of both the subject matter and the person, and justified by the pleadings and proofs, or the consent of the parties: they are proof against direct attacks by appeals or writ of error, or by bill in Chancery, and, of course, also, against collateral attacks.

"2. **Voidable Judgments and Decrees**, being those which are valid on their face, and, therefore, proof against collateral attack, but are reversible on direct attack by appeal or writ of error, or by bill in Chancery.

"3. **Void Judgments and Decrees**, being those that appear on the face of the record itself to have been rendered without jurisdiction of the parties or the subject matter, or without being justified by the pleadings, or the consent of parties. **Void judgments have no efficacy or probative force, and yield to collateral attack**" (emphasis supplied), Art. 454, at p. 518.

". . . There is a wide difference between a void judgment and a voidable judgment. See, ante, Arts. 454, 607. **A void judgment binds nobody; it bars nobody; it is a nullity; and no judgment at all; and justifies no act done under it.** Holmes v. Eason, 76 Tenn. 754, 760; Finley v. Gaut, 67 Tenn. 148, 151. A voidable judgment, however, binds everybody, and justifies every act done under it, until reversed or set aside." Footnote 50, Art. 860, at p. 631 (emphasis supplied).

In its action here, the Court of Appeals did not just depart from this well established and recognized law of Tennessee. Indeed, the Court proceeded upon a theory which neither petitioners nor respondents suggested as

available under the law of Tennessee when these cases were first heard by the courts of that State.[10]

Petitioners undertook to test the jurisdiction of the Chancellor in accordance with traditional Tennessee procedure. They now find themselves subjected to a novel procedural requirement of which they could not fairly be deemed to have been apprised. That novelty is designed to deprive them of due process and equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution.

Therefore, the decision below is thus in conflict with this Court's holding in **National Association for the Advancement of Colored People v. State of Alabama**, 357 U. S. 458, 78 S. Ct. 1163:

> "Novelty in procedural requirements cannot be permitted to thwart review in this Court, applied for by those who in justified reliance upon prior decisions seek vindication in State courts of their Federal constitutional rights" **Id.** 457, 1169.[11]

This departure from a previously recognized method of attack on State action in Tennessee does not constitute a non-federal ground adequate to defeat jurisdiction of this Court. **Staub v. City of Baxley**, 355 U. S. 313, 320, 78 S. Ct. 277, 281.

3. The Court of Appeals has now erroneously held that (a) this Supreme Court did not decree that **Teamsters v. Kerrigan Iron Works**, supra, governs the jurisdictional

---

[10] Respondents, certainly so far as this proceeding is concerned, are bound by their previously taken position, namely, that decision of the sole question regarding the Chancellor's jurisdiction would be dispositive of the alleged contempts. Cf. *N.A.A.C.P. v. Livingston*, Per Curiam, ... U. S. ..., June 8, 1959.

[11] Cf. "To sustain his conviction for contempt under these circumstances would be to send him to jail for a crime he could not with reasonable certainty know he was committing. This Court has often held that fundamental fairness requires that such reasonable certainty exists." *Scull v. Commonwealth of Virginia*, ... U. S.

problems raised by the present cases; and (b) **Kerrigan** and the present case are distinguishable.

In vacating and remanding upon the prior Petition for Certiorari, this Supreme Court was aware of the exact parallel between **Kerrigan** and the present case.[12] Only the last minute, untimely, novel and about-face assertion that in Tennessee a void order entered without jurisdiction of the subject matter has some binding effect, required this Court to order further examination of the matter by Tennessee. It could not have been contemplated that in the course of such examination Tennessee would proceed to abandon a fixed principle of its jurisprudence and procedure—a principle already recognized, accepted and relied upon by the parties and by her courts as the specific law of this case.

* * * * * * *

In Tennessee, and in the City of Nashville, organized labor in general, and the Teamsters' Union in particular, represent a distinct minority, numerically and politically. In that locality (as elsewhere) this minority has come

---

[12] See footnote 7, supra. The Court of Appeals of Tennessee suggests that *Kerrigan* involved an injunction against Local 327, but the present case does not. However, as the record shows, in the present case the same Local has been actually held in contempt of the injunction and thus has been in reality enjoined to an even more damaging extent than in *Kerrigan*.

Tennessee courts continue to follow the latest statement of the Court of Appeals in the *Aladdin* cases, that *Teamsters v. Kerrigan Iron Works, supra*, does not govern the issue of preemption in such cases as the present in Tennessee. Temporary injunctions granted by Tennessee Chancellors in other cases continue in force, although motions have been made to dissolve same. For example, see *Jakes Foundry Company v. Tennessee-Carolina Transport et al.* (Davidson County Chancery, Docket No. 80312, now on appeal in the Court of Appeals of Tennessee); *Keith-Simmons, Inc. v. Arnold Eigon Truck Lines et al.* (Davidson County Chancery, Docket No. 80417); *Clica Robinson d/b/a Smithville Freight Lines v. Hoover Motor Express Company, Inc., et al* (Dekalb County Chancery Court); *Georgia Highway Express, Inc. v. C & D Motor Delivery et al.* (Hamilton County Chancery Court); *Aladdin Industries, Inc. v. Associated Transport* (Davidson County Chancery Court).

under criticism and fire from many quarters. Those facts are a matter of common and judicial notice. We submit, however, that the availability of the benefits of due process, equal protection of the laws, and pre-emptive Federal administrative procedures provided by the Constitution and laws of Congress, cannot be made to depend upon the relative eminence or popularity of a particular litigant, his standing in the public press, or the disputes and issues with which he may be concerned elsewhere. Tennessee has here tailored her long-standing law and procedure to make them apply to petitioners in a fashion hitherto unknown to her bar and to her courts. That simply does not square with the Constitutional requirement of equal treatment under State law.

CONCLUSION.

Writ of Certiorari should be granted and the judgments of the Court of Appeals of Tennessee reversed.

Respectfully submitted,

HUGH HOWSER,
1101 Stahlman Building,
Nashville, Tennessee,

CECIL D. BRANSTETTER,
4 Stahlman Building,
Nashville, Tennessee,

JEROME A. COOPER,
1329 Brown-Marx Building,
Birmingham, Alabama,
Counsel for Petitioners.

I, Jerome A. Cooper, one of the attorneys for petitioners herein, and a member of the Bar of the Supreme Court of

the United States, hereby certify that a copy of the foregoing Petition for Certiorari and Appendices was this day served on adverse parties herein in accordance with Supreme Court Rules 21 (1) and 33, by depositing same in the U. S. Mails at Birmingham, Alabama, with first class postage prepaid, addressed to counsel of record at their post office address as follows:

Waller, Davis & Lansden,
American Trust Building,
Nashville, Tennessee.

Dated June .., 1959.

APPENDIX A.

Aladdin Industries, Inc.

v.

Associated Transport, Inc., et al.

Aladdin Radio Industries, Inc.

v.

Adkins Transfer Company, Inc., et al.

} Davidson Equity (Two cases)

Court of Appeals of Tennessee,
Middle Section at Nashville.

On Remand From the Supreme Court of the United States.

Filed August 6, 1958.

Waller, Davis & Lansden, of Nashville, and Walton H. Hamilton, of Washington, D. C., all for Appellees, Aladdin Industries, Inc., and Aladdin Radio Industries, Inc.

Cooper, Mitch & Black, of Birmingham, and Williams, Harwell, Howser & Thomas and Moore, Crownover, Branstetter & Folk, of Nashville, for Appellants, Douglas McCrary, et al.

Decree in Accordance With Opinion.

S. L. FELTS,
Judge.

Avery, P. J. (W. D.), Concurs.

Shriver, J., Concurs.

Aladdin Industries, Inc.

v.

Associated Transport, Inc., et al.

Aladdin Radio Industries, Inc.

v.

Adkins Transfer Company, Inc., et al.

} Davidson Equity (Two cases)

Opinion.

(Filed Aug. 6, 1958.)

These were contempt cases, ancillary to the main cases above styled, in which we affirmed the Chancellor's decrees punishing appellants[1] for contempt for violating the temporary injunction granted to him to preserve the status quo pending a hearing and determination of the cases (first case, ... Tenn. App. ..., 298 S. W. 2d 770; second case, Memo. op. July 27, 1956, unreported).

The contemners in both cases joined in a petition to the Supreme Court of the United States for the writ of certiorari. That Court granted the writ, vacated our decrees, and remanded the cases, in an opinion in these words:

> "No. 116. Douglas McCrary, M. M. Bratton, et al., Petitioners, v. Aladdin Industries, Inc., . . . Per Curiam: The petition for writ of certiorari is granted. The judgment of the Court of Appeals of the State of Tennessee, Middle Division, is vacated and the case is remanded for consideration in light of Teamsters, C. H. & T. D. v. Kerrigan Iron Works, Inc., 353 U. S.

---

[1] In the first case the Chancellor found 14 individuals and a labor union guilty of contempt and sentenced each of the men to three days in jail and the union to pay all the costs. In the second case he found five men guilty of contempt and fined each $50.00 and costs.

968, 1 L. ed. 2d 113, 77 S. Ct. 1055." ... U. S. ..., 2 L. ed. 2d 22.

And the Court's mandate was that our decrees were vacated and the cases remanded to this Court "for consideration in light of Teamsters v. Kerrigan, 353 U. S. 968." The Kerrigan decision reversed our decree (... Tenn. App. ..., 296 S. W. 2d 379) in an opinion as follows:

> "No. 818. Teamsters, Chauffeurs, Helpers & Taxicab Drivers, Local Union No. 327, et al., Petitioners, v. Kerrigan Iron Works, Inc., et al. . . . Per Curiam: The petition for writ of certiorari is granted and the judgment of the Court of Appeals of Tennessee is reversed. Weber v. Anheuser-Busch, Inc., 348 U. S. 468, 99 L. ed. 546, 75 S. Ct. 480; General Drivers, etc., v. American Tobacco Co., 348 U. S. 978, 99 L. ed. 762, 75 S. Ct. 569." 353 U. S. 968, 1 L. ed. 2d 1133, 77 S. Ct. 1055.

For consideration of these cases in the light of that case, we restored them to the docket for hearing, and oral arguments have been heard and briefs filed by both sides, as to the decrees we should enter under the mandate.

Appellants contend that the Kerrigan case is a precedent for these cases, requiring us to reverse the Chancellor's decrees and discharge appellants as contemners; that it shows that the Chancellor had no jurisdiction of the subject matter in these cases, because that was a labor dispute which had been pre-empted by federal from state power; and that the Chancellor's temporary injunction was void and might be contemned with impunity.

Appellees insist that the Kerrigan case is no precedent for these cases; that the Chancellor had jurisdiction to determine all the questions, including that of his own jurisdiction, and to grant a temporary injunction to preserve the *status quo* pending such determination; that appellants

could not collaterally attack or flout the injunction, but were bound to respect it pending a direct and orderly review of it; and that their defiance of it was contempt for which it was Chancellor's duty to punish them.

It would seem that if the Supreme Court had regarded its ruling in the Kerrigan case as a precedent requiring reversals in these cases, it would have entered the reversals, as it did in that case; and that the fact that it remanded the cases for consideration in the light of that case, indicates that they may be ruled by it or may be distinguished from it, either on a federal ground or a non-federal ground adequate to support the Chancellor's decrees.

It is true these cases and the Kerrigan case had certain similarities or characteristics in common which, without referring to the differences, we stressed and emphasized in our former opinions (Kerrigan, 296 S. W. 2d 579; Aladdin, 298 S. W. 2d 770), because we thought they were determinative and called for the conclusion expressed by us. But there are at least these two obvious and important differences between that case and these:

1. Differences in parties, pleadings, and issues in the main suits.

(a) The Kerrigan case was a suit by a shipper against **both** the carriers and the **labor union and its agents**; and the relief sought was an injunction (1) to require the carriers to continue their service and (2) to enjoin the union and its agents from "concerted" conduct alleged to be "a conspiracy" and an "illegal boycott" to force complainant to accede to the demands of the other union striking and picketing complainant's plant;[2]

[2] In the Kerrigan case the bill of complaint alleged, among other things: "Complainant alleges that the combined and concerted action among the members of the defendant Local No. 327 and by said members and the carriers which employ them, including defendants, is in law an unlawful conspiracy, and constitutes an illegal

(b) In the main Aladdin cases the suit was by a shipper against the carriers alone. No labor union and no union agent was a party to the bill. The only relief sought was an injunction to require the carriers to continue their customary service to complainant's plant. While the bill did state, on information, that the reason the carriers refused to render the service was that their employees would not cross another union's picket line at the plant, it did not state or show that any of such employees were union men or in anywise concerned in any labor dispute.[3]

2. **Kerrigan was the main suit and these were ancillary.**

(a) The Kerrigan case was the main suit against the carriers, the union and its agents. There was no question of contempt. Defendants respected the authority of the court to try the case, and brought up its final decree for direct review by appeal. The only question was whether the action of the Chancellor, in assuming jurisdiction and rendering the final decree, was correct or not, and if not, the decree would be reversed though not void but only voidable or erroneous.

(b) These cases were not the main suits but ancillary contempt proceedings therein, under the same style. Appellants did not seek any orderly review, but flouted the

---

boycott, the purpose of such concerted action being to deprive complainant of public carrier service and to thereby force complainant to accede to the terms demanded by the other union conducting a picket line at complainant's plant, to which complainant has no legal obligation to do."

[3] The original bill of complaint (substantially the same in both Aladdin cases) did not refer in any way to appellant union, Local 327 of Teamsters, etc., or any of its agents or any of the other appellants. While the bill did refer to another union picket line at the plant, it did so only to show the irrelevance of that matter. It averred, on information and belief, "that said pickets in the vicinity of complainant's said plant do not furnish the defendants with a legal or sufficient excuse for failing and refusing to carry freight to or from the complainant's said plant."

temporary injunction as void and defied the court as a usurper. After being adjudged in contempt by the Chancellor, they brought up the contempt decree by appeal. **The question is whether the temporary injunction was void.** This depends on whether the Chancellor had jurisdiction to grant it, and this is to be determined upon the bill on which the court assumed jurisdiction and issued the temporary injunction.

Do these cases, despite these differences, fall within the principle of the Kerrigan decision? What is that principle? It is not stated in that opinion but is to be sought in the cases there cited, particularly the Weber case, since the other case cited, the American Tobacco Company, was itself a per curiam citing the Weber case and depending on it, as we understand.

In the Weber case a labor union, the bargaining agent of employees of complainant, went on strike and picketed complainant's plant to compel it to insert, in their proposed new collective agreement, a promise that it would have its millwright work done only by contractors who had collective agreements with the union. Complainant charged the union with "an unfair labor practice" under sec. 8 (b) (4) (D) of the Taft-Hartley Act before the National Labor Relations Board, and the Board dismissed this charge.

In the meantime, before the Board had acted on the charge, complainant sued the union in the state court to enjoin the strike and picketing, alleging it constituted "a secondary boycott" under state law, and also **"an unfair labor practice"** under section 8 (b) (4) of the federal Act. This latter averment was held to make the case outside state power and within exclusive jurisdiction of the Board. The Court said:

> "We realize that it is not easy for a state court to decide, merely on the basis of a complaint and an-

swer, whether the subject matter is the concern exclusively of the federal Board and withdrawn from the State . . . But where the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the federal Act, may be reasonably deemed to come within the protection afforded by that Act, the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance." 348 U. S. 481, 99 L. ed. 558.

It seems that this is the principle of the Weber case, and that the Court held that the Kerrigan case was brought within this principle by the averment of the bill that defendants (the union and others) were guilty of "concerted action", "conspiracy", and "an illegal boycott', to force complainant to yield to the other union demands, and the state court erred in assuming jurisdiction; but whether this action was **void**, or **merely voidable** or **erroneous**, does not appear.

In these cases the question of the Chancellor's jurisdiction of the subject matter is to be determined upon the state of the case at the time the court assumed jurisdiction and issued the temporary injunction—that is, upon the allegations of the original bill, which must be taken as true for the purpose of testing jurisdiction. 1 Crownover's Gibson's Suits in Chancery, 5th ed., sec. 146; Myers v. Wolf, 162 Tenn. 42, 50, 34 S. W. 2d 201, 203; Malden Trust Co. v. Brooks, 276 Mass. 464, 177 N. E. 629, 80 A. L. R. 1028; Moore v. Chesapeake & O. R. Co., 291 U. S. 205, 210, 78 L. ed. 755, 759; Brown v. Coumanis (5 C. C. A.), 135 F. 2d 163.

The averments of the original bill (practically the same in each case) made a case where a shipper was entitled

to an injunction to require the carriers to continue the service, which case was within the Chancellor's jurisdiction, his being the court of general equity jurisdiction in Tennessee. Aladdin Industries v. Associated Transport, ... Tenn. App. ..., 298 S. W. 2d 775, and authorities there cited.

Upon the averments of the bill, taken as true, it was within the Chancellor's power to grant the temporary injunction to preserve the status quo pending determination of the cases. The status quo may be a condition of action, as well as a state of rest, and in such case it is proper to enjoin carriers to continue the service (Toledo, A. A. & N. M. Ry. Co. v. Pennsylvania Co., C. C., 54 F. 730, 741, 742, 19 L. R. A. 387, 393), and the injunction runs not only against the parties defendant (carriers) but also against their officers, agents and employees without their being made parties to the suit. Aladdin Industries v. Associated Transport, supra, ... Tenn. App. ..., 298 S. W. 2d 776, and authorities there cited; Frankfurter and Greene, **The Labor Injunction**, 123-133, and cases there cited.

No labor union and no union agent was made a party to the bill. Nor was any relief sought against any labor union or any union agent. The temporary injunction ran against the carriers, "their officers, agents, and employees". But the bill did not refer in any way to appellant union, Local 327, or to any of its officers or members, or to any of the appellants. Nor did it contain any averment of any labor dispute or union conduct within the federal Act.

This temporary injunction was served on defendants and their employees were notified of it, and they complied with it and rendered carrier service for some two months, when they began to disobey and flout the injunction. Thus, when they became guilty of contempt, the only pleading was the bill, which contained no averment to take the case

out of state power or to make a case pre-empted by federal authority.

Then came a supplemental bill, which only added more carriers, and petitions for contempt, which did not change the nature of the case already before the Chancellor, but only brought before him the fact of appellants' prior contempt. The petitions charged that the two unions (Local 327 and Local 5003) and their officers and agents had conspired to violate the temporary injunction by inducing the carriers' employees not to perform the service; and that Local 327 had placed persons at the plant carrying its sign, under the pretense that it was picketing to organize complainant's office employees.

But these allegations were of acts of contempt, not of acts of "concerted activities" under sec. 7 of the federal Act, or of a union "unfair labor practice" under sec. 8 (b) (4) of that Act; and we think such averments did not divest the Court of the jurisdiction it had already taken of the cases, or make the case one pre-empted under federal authority, or relieve appellants of the consequences of their prior contempt for their defiance of the temporary injunction and of the court's authority.

It is true in our former opinion (... Tenn. App. ..., 298 S. W. 2d 777, 779-783), we assumed, arguendo, that the refusals of appellant truck drivers to cross the other union picket line and render the carrier service, as required by the temporary injunction, were "concerted" refusals, and held that even so they were neither "concerted activities" under sec. 7, nor a union "unfair labor practice" under sec. 8 (b) (4), of the federal Act.

But in fact such refusals were not concerted. The answers of appellant truck drivers stated that the union had not advised them but each individual had determined the matter for himself; and while they confessed they had violated the injunction by their refusals, each stated that

his refusal was caused by his fear that violence would be done himself or his family if he crossed the other union's picket line; and each testified to the same effect.

These statements in appellants' answers and in their testimony, that each of them was acting individually and separately, and not in concert, are binding upon them and estop them to contend to the contrary. Crownover's Gibson's Suits in Chancery (5th ed.), sec. 467; Wilson v. Winters, 108 Tenn. 398, 67 S. W. 800; Sartain v. Dixie Coal & Iron Co., 150 Tenn. 633, 266 S. W. 313; Fagg v. Benton Motor Co., 193 Tenn. 562, 564, 246 S. W. 2d 978; . . . .

Since the acts of each of the individual appellants in defiance of the temporary injunction were separate and individual acts, and not "concerted activity", we understand they could not be a "concerted activity" within the protection of sec. 7 of the federal Act. N. L. R. B. v. Illinois Bell Tel. Co. (7 C. C. A.), 189 Fed. 2d 124, 127-129. Nor could such acts of these individuals, unconnected with any union, be a union unfair labor practice under sec. 8 (b) (4) of that Act, which by its terms applies only to a "labor organization or its agents".

As far as appellant union is concerned, its placing a person with its sign at complainant's plant was neither bona fide nor for a lawful purpose, but was done solely to defy the court and defeat the temporary injunction requiring the carriers and their employees to render the service. The Chancellor so found and, as pointed out in our former opinion, the proof amply sustained his finding. We think the union cannot invoke the federal Act to shield its willful defiance of the state court.

So, in the main Aladdin cases, we think the subject matter was not pre-empted by the federal act and withdrawn from state power but was within the Chancellor's jurisdiction. But irrespective of whether he had jurisdiction in the sense that he could have entered final decrees that

would have ultimately been held free from error, he had jurisdiction to determine all the issues, including that of his own jurisdiction, and to grant a temporary injunction to preserve the status quo pending such determination.

And pending such determination no person was at liberty to defy the court or to aid any party defendant in a breach of the injunction. Such an injunction, however erroneous, must be obeyed until set aside by the court granting it or by an appellate court. State v. Ragghianti, 129 Tenn. 560, 567, 167 S. W. 689, ...; Nashville Corp. v. United Steelworkers etc., 187 Tenn. 444, 450, 215 S. W. 2d 818, ...; Churchwell v. Callens, 36 Tenn. App. 119, 252 S. W. 2d 131; United States v. United Mine Workers of America, 330 U. S. 258-385, 67 S. Ct. 677, 91 L. ed. 884-961.

These cases distinguish between an order that is **void** and one that is only **voidable** or **erroneous**, and recognize that a void injunction binds no one. If a court should go so clearly and so far outside of its jurisdiction as to act, not as a court, but as a usurper, its order would be void, and would bind no one, and could be disregarded by anyone with impunity. The matter is stated thus by Mr. Justice Frankfurter:

> "Only when a court is so obviously traveling outside its orbit as to be merely usurping judicial forms and facilities, may an order issued by a court be disobeyed and treated as though it were a letter to a newspaper. Short of an indisputable want of authority on the part of a court, the very existence of a court presupposes its power to entertain a controversy, if only to decide, after deliberation, that it has no power over the particular controversy." United States v. United Mine Workers of America, supra, 330 U. S. 309-310, 91 L. ed. 921.

Where a court has general equity jurisdiction and its action is invoked by proper pleadings upon a matter fairly

debatable, at least not obviously outside such jurisdiction, the court has authority to determine the issues, including that of its own jurisdiction, and to grant a temporary injunction or stay order to preserve the status quo pending such determination, and to punish for contempt disobedience of such order or injunction.

This is a matter of state law, or rather a general principle of equity which is universally recognized and applied by all courts, both federal and state. We cite some illustrative cases applying this rule:

In Seaward v. Paterson (Eng.), L. R. [1897], 1 Ch. Div. 545, it was held that a Court of Chancery **has jurisdiction** to punish one not a party to the suit, not a party to the injunction and not bound by it, for contempt in defying the court by aiding a defendant in committing a breach of the injunction. It was there said by A. L. Smith, L. J.:

> "As regards the law, I have myself no doubt that if a person who knows that an injunction has been granted aids and abets in committing a breach of it the Court of Chancery **has jurisdiction to commit him for contempt**, although he is not a defendant in the action, and is not a person against whom the injunction has been granted." (Emphasis ours.)

In Pitcock v. State, 91 Ark. 527, 121 S. W. 742, 134 Am. St. Rep. 83, 93, it was held that a Court of Chancery has jurisdiction to determine all the issues of a case, including that of its own jurisdiction, and to grant a temporary injunction to preserve the existing **status** of the subject matter, and to punish for contempt disobedience of such temporary injunction. It was there said:

> "In considering this question, the distinction must not be overlooked between the violation of a preliminary injunction preserving the status quo of the subject matter of the litigation during the pendency thereof, and the final decrees of courts requiring the

parties to do or not to do the things enjoined upon them by such decrees. In the latter cases, if the decree was rendered without jurisdiction, it can be disobeyed with impunity, for no one owes obedience to a void decree, as it is without any force whatever . . .

On the other hand, a court possesses the power of hearing and determining the question of its jurisdiction, and may, while so doing, require the parties to preserve the status of the subject matter: United States v. Arredondo, 6 Pet. 691, 8 L. ed. 547; United States v. Shipp, 203 U. S. 563, 27 Sup. Ct. Rep. 165, 51 L. ed. 319, 8 Ann. Cas. 265."

In State v. Patten, 41 N. M. 395, 69 P. 2d 831, the Court said: "The test of the jurisdiction of a court is whether or not it had **power to enter upon the inquiry**; not whether its conclusion in the course of it was right or wrong."

This general principle of equity has often been applied in the federal courts. Some of the cases so applying it are: United States v. Shipp, 203 U. S. 563, 51 L. ed. 319, 8 Ann. Cas. 265; Howat v. Kansas, 258 U. S. 181, 189, 190, 66 L. ed. 550, 559; Carter v. United States, 135 F. 2d 858, 861; United States v. United Mine Workers of America, supra.

In the Shipp case a man at Chattanooga, under sentence of death in the state court for rape, sought a writ of habeas corpus in the United States Circuit Court. That Court held his petition presented no question of federal jurisdiction. He appealed to the Supreme Court of the United States and obtained in that Court an order staying all proceedings against him and retaining custody of him pending his appeal. On the same evening the newspapers carried a story of the stay, and a mob broke into the jail and lynched him.

Shipp, the Sheriff, was charged with a conspiracy in connection with the lynching, and was brought before the

Supreme Court to show cause why he should not be held in contempt. He objected that since the Court had no jurisdiction of the subject matter, its order might be contemned with impunity. The Court overruled this contention and held that even if it had no jurisdiction of the appeal, it still had jurisdiction to determine the question and to preserve the status quo pending such determination, and to punish Shipp for contempt.

In the Carter case, Coumanis obtained an injunction enjoining Carter from picketing his restaurant and interfering with delivery of food, beverages, etc., to his place. Carter violated this injunction and though the District Court had no jurisdiction to issue the injunction (Brown v. Coumanis, supra, 135 Fed. 2d 163), nevertheless it had jurisdiction to punish Carter's contempt. The Court said:

> "It cannot now be broadly asserted that a judgment is always a nullity if jurisdiction of some sort or other is wanting. It is now held that, except in case of plain usurpation, a court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged" (citing cases). Carter v. United States, 135 Fed. 2d 861.

In Howat v. Kansas, supra, under a Kansas statute a state court issued an injunction prohibiting defendants from calling a general strike in the mines. Defendants treated the injunction as void and disregarded it, upon the theory that the statute was unconstitutional; and the court punished them for contempt. They brought the question to the Supreme Court of the United States. That Court held that they were bound to obey the injunction whether the statute was constitutional or not. The Chief Justice said:

> "An injunction duly issuing out of a court of general jurisdiction with equity powers, upon pleadings properly invoking its action, and served upon persons made

parties therein and within the jurisdiction, must be obeyed by them, however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law, going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished." (Citing cases.)

All of the federal cases above cited, with others, were approved in United States v. United Mine Workers of America, supra. In that case the District Court issued a temporary order restraining defendants from calling a strike. Defendants disobeyed the injunction and were punished for contempt. It was held that whether the Court had jurisdiction to grant final injunctive relief or not, it had jurisdiction to determine the question of its jurisdiction and to issue a temporary restraining order to preserve the status quo pending such determination, and to punish disobedience of the order as contempt.

It is our conclusion that upon this general principle of equity the Chancellor, irrespective of the question of his ultimate jurisdiction, had jurisdiction to determine the question, and to issue a temporary injunction preserving the status quo pending such determination, and to punish appellants for contempt for disobeying the injunction.

A decree will be entered in this Court affirming the Chancellor's decrees in these ancillary contempt cases and remanding them to the Chancery Court, Part II, for further proceedings not inconsistent with this opinion. The costs are adjudged against appellants.

S. L. Felts,
Judge.

APPENDIX B.

Aladdin Industries, Inc.

v.

Associated Transport, Inc., et al.

Aladdin Radio Industries, Inc.

v.

Adkins Transfer Company, Inc., et al.

} Davidson Equity (Two cases)

Court of Appeals of Tennessee,
Middle Section at Nashville.

On Petition to Rehear.

Filed December 5, 1958.

Waller, Davis & Lansden, of Nashville, and Walton H. Hamilton of Washington, D. C., all for Appellees, Aladdin Industries, Inc., and Aladdin Radio Industries, Inc.

Cooper, Mitch & Black, of Birmingham, and Williams, Harwell, Bowser & Thomas and Moore, Crownover, Branstetter & Folk, of Nashville, for Appellants, Douglas McCrary, et al.

Petition Denied.

Avery, P. J. (W. D.), Concurs.

Shriver, J., Concurs.

S. L. Felts,
Judge.

Aladdin Industries, Inc.

v.

Associated Transport, Inc., et al;

Aladdin Radio Industries, Inc.

v.

Atkins Transfer Company, Inc., et al.

Davidson Equity
(Two cases)

On Petition to Rehear.

Appellants have filed a petition fo rehearing, complaining of our affirmance of the Chancellor's decrees punishing them for contempt for flouting his temporary injunction. They assert we overlooked, or disregarded, controlling decisions of the Supreme Court of this State which required us to hold this injunction was void and could be contemned by them with impunity.

The decisions to which petitioners refer, as having established the law of this State contrary to our holding, and on which they claim to be discharged as contemners, are these: Oliver et al. v. Local Lodge No. 656, etc., 182 Tenn. 236, 185 S. W. 2d 525; Manning v. Feidelson, 175 Tenn. 576, 136 S. W. 2d 510; Howell v. Thompson, 130 Tenn. 311, 170 S. W. 253.

The Oliver case was a suit by discharged employees for reinstatement, back pay, and damages, upon the allegation that though not members of the union, they had been discharged under a maintenance-of-union-membership clause. The Court held that this was a charge of an unfair labor practice under sec. 8 (a) (3) of the federal Act, and the state Court had no jurisdiction to enter any order except to dismiss the suit. Cf. International Asso., etc., v. Gonzales, 350 U. S. ..., 2 L. ed. 2d 1018.

In the Manning case, the National Labor Relations Board found that an employer had been guilty of an un-

fair labor practice in discharging its employees, and made an award for back pay to them. By compromise settlement, the employer paid $20,000.00 to the Board's Regional Director, as trustee, to distribute to the employees. One of them sued the trustee to enjoin him and control the manner of distribution. It was held that exclusive jurisdiction of the matter was in the Board and the Court could only dismiss the suit.

In the Howell case the Attorney General of the State applied for a supersedeas to vacate a temporary injunction of the Chancellor, enjoining him from proceeding against complainants under the Nuisance Act. The Court denied the application, holding that, under our practice, supersedeas issues to supersede an interlocutory order only where such order (1) "trenches upon final relief" and (2) is "of a nature to be actively enforced"; and that this injunction had neither of these features.

Thus, it is seen none of these decisions supports petitioners' claim that the Chancellor's temporary injunction was void and could be contemned by them with impunity. In none of those cases was there any question of contempt, or did any party defy the Court as a usurper, as petitioners did here. Instead, all the parties respected the Court's authority to hear the case and determine the question of its jurisdiction.

Along with those cases, petitioners also rely on our case of Churchwell v. Wallens, 36 Tenn. App. 119, 252 S. W. 2d 131. There, this Court affirmed the Chancellor's decree punishing defendant for contempt for disobeying a temporary injunction. Obviously, that case does not support, but negatives, petitioners' claim.

In the above cited cases, the Court used some general expressions, on which petitioners rely, as follows:

(1) In the **Oliver** case: "[T]his Court held that our State Courts are without jurisdiction of controversies

under the National Labor Relations Act, 29 U. S. C. A., sec. 151 et seq., and it follows, therefore, that any order that we might enter, except that of dismissal for lack of jurisdiction, would be void. Manning v. Feidelson supra, 175 Tenn. at page 578, 136 S. W. 2d 510" (182 Tenn. 240).

(2) In the **Howell** case: "If the court is without jurisdiction of the subject-matter it is undertaking to proceed, its orders are void. An injunction made in respect to a subject-matter beyond the jurisdiction of the court is a mere nullity, and is binding on no one. It may be disregarded. State v. Regghianti, 129 Tenn. 560, 167 S. W. 689" (130 Tenn. 323, 324, 170 S. W. 256).

The above cases, with others cited in our opinion (p. 11), distinguish between an order that is void and one that is only voidable or erroneous; and State v. Ragghianti, supra, applied that distinction. It was there held that a temporary injunction preserving the status quo, though granted ex parte and contrary to the statute, was not void but only voidable, defendant was bound to obey it while it remained in force, and was properly punished for contempt for disobeying it. The Court quoted the rule from Joyce:

"'Unless an injunction order is void upon its face for lack of jurisdiction on the part of the judge who granted it, it must be obeyed, **however erroneous** the granting of it may have been, until it is dissolved on motion or appeal or some other method of direct review in the action in which it was granted.' 1 Joyce on Injunctions, sec. 247.'" (Emphasis ours.)

The Court referred to Weaver v. Toney, 107 Ky. 419, 54 S. W. 732, where the injunction was void, because it was granted ex parte, required the holding of an election next

day, and, if obeyed, would have accomplished all the relief sought. The Court distinguished that injunction, which would have determined the rights of the parties before hearing, from the temporary injunction before it, which preserved the status quo pending a hearing and determination of the case. The Court said:

> "The temporary injunction here issued might have put the defendant to some inconvenience and slight pecuniary loss, but the subject-matter of the litigation was left open for future investigation and determination" (129 Tenn. 568, 167 S. W. . . .).

A similar case was Weidner v. Friedman, 126 Tenn. 677, 151 S. W. 56. There, bills were filed to enjoin defendants from maintaining bawdy houses, and a temporary injunction was granted. Some of defendants violated it and were punished for contempt by the Chancellor. On appeal, the bills were dismissed because the Chancellor **had no jurisdiction** to entertain them, but this was held not to affect the contempt. The Court said:

> "The dismissal of the said bills will have no effect upon the contempt proceedings. It was the duty of defendants to obey the injunction, and their failure to do so was a contempt of court for which they should be punished" (126 Tenn. 685, 686, 151 S. W. . . .).

That case was approved in Nashville Corp. v. United Steel Workers etc., 187 Tenn. 444, 450, 215 S. W. 2d 818, ... There, the Court affirmed the Chancellor's decrees punishing defendants for contempt for violating his temporary injunction limiting picketing at a struck plant. The Court said:

> "Regardless of whether or not the injunction was 'irregular or erroneous,' 'it must while it continues in force be obeyed.' 28 Am. Jur., sec. 330, p. 504. In a note to the above quoted statement numerous cases are

cited as authority therefor. See also Vanvabry v. Staton, 88 Tenn. 334, 12 S. W. 786; Weidner v. Friedman, 126 Tenn. 677, 151 S. W. 36; 42 L. R. A., N. S., 1041 . . . ." (187 Tenn. 450).

As will be noted, the Nashville Corp. case and the Churchwell case, supra, referred to the text in American Jurisprudence (12 Am. Jur. 408, 28 Am. Jur. 504), which cites, among others, these cases cited by us in our former opinion (pages 11-16): United States v. Shipp, supra; Howat v. Kansas, supra; United States v. United Mine Workers etc., supra; and Pitcock v. State, supra.

Also, the Churchwell case and the Nashville Corp. case cited approvingly the text of Gibson (2 Crownover's Gibson's Suits in Chancery [5th ed.]) which is, in part, as follows:

"The mandates of a Court of Chancery **must** in **all cases** be obeyed . . . **without question**, or **evasion**. The party, upon whom the order or command of the court operates, is **not allowed to speculate** upon the **equity** of the bill, or the **legality** or **regularity** of the order or decree, or of the **writ** issued thereon; but his simple duty is to obey . . . ." (Gibson, sec. 964) (emphasis ours) (quoted in 187 Tenn. 450-451, 215 S. W. 2d . . .).

Again the same authority (sec. 893) says:

"It matters not **what irregularities** may affect the proceedings, nor **what error** the Court, or Judge, may **have committed** in granting the injunction . . . so long as the injunction is in force it must be **scrupulously observed**, and **implicitly obeyed**. And the defendant is **not allowed to sit in judgment** on the **equity** of the bill, or on the **rightfulness** of the **writ**, and **should not as to the jurisdiction**; his one duty is to obey" (emphasis ours) (cited in 36 Tenn. App. 131, 252 S. W. 2d).

Thus, this says "in **all** cases", no matter "**what** error" the Chancellor may have committed in granting the injunction, it must be implicitly obeyed, as long as it remains in force, and the defendant is not "to speculate" or "sit in judgment" as to its "equity", or legality "as to the **jurisdiction**".

This broad generalization of "**all** cases", of whatsoever error, must, of course, be taken with the distinction between a case of a void order and a case of a voidable or erroneous order; and, when so taken, it correctly states the general principle of equity which is the law of this State and is generally recognized by all courts, federal and state, and was applied in the cases cited and discussed in our opinion, pages 11-16; see also cases cited in the Anno., 12 A. L. R. 2d 1059, 1066, 1078, 1079.

So, it is seen we have not, as petitioners assert, undertaken to change the law or to apply "novel procedure" in this case. Instead, we have applied only the general principle of equity which has long been the law in this State and has long been applied in other states and in the federal courts.

As we have seen, that principle is: Where the action of a court of general equity jurisdiction is invoked by proper pleading upon a matter fairly debatable—not obviously and indisputably outside its jurisdiction—it has authority to determine all the issues, including that of its own jurisdiction, and to grant a temporary injunction to preserve the status quo pending such determination, and to punish defiance of it as contempt.

This is true even in a case which the Court, or an appellate reviewing Court, may ultimately have to dismiss for want of jurisdiction of the subject matter. "The test of jurisdiction of a Court is whether or not it had power to enter upon the inquiry, not whether its conclusion in the course of it was right or wrong." State *v.* Patten, 41 N.

W. 395, 69 P. 2d 831; also cases cited in Anno., 12 A. L. R. 2d 1059, 1066, 1078-1079.

> "Only when a court is so obviously traveling outside its orbit as to be merely usurping judicial forms and facilities, may an order issued by a court be disobeyed . . . Short of an indisputable want of authority on the part of a court, the very existence of a court presupposes its power to entertain a controversy if only to decide, after deliberation, that it has no power over the particular controversy.
>
> . . . . . .
>
> To say that the authority of the court may be flouted during the time necessary to decide is to reject the requirements of the judicial process." Mr. Justice Frankfurter, **United States v. United Mine Workers, etc.**, supra, 330 U. S. 310, 311, 91 L. ed. 921, 922.

As pointed out in our opinion (pages 3-11) the bill, upon which the Chancellor's jurisdiction is to be tested, made a case within his jurisdiction, and alleged nothing to make a case pre-empted by federal power. So, he had jurisdiction to determine the issues, including that of his own jurisdiction, and to grant the temporary injunction to preserve the status quo pending such determination, and to punish defiance of it as contempt.

Thus, this case is distinguishable from Ex Parte Twedell, ... Tex. ..., 309 S. W. 2d 834, on which petitioners rely, where a bill, to enjoin a union and its agents from picketing, alleged such a clear case of an unfair labor practice under sec. 8 (b) (1), and (2) of the federal Act as excluded state action (see Weber case, supra, 348 U. S. 480, 99 L. ed. 557).

Petitioners assert that our opinion "gives full approval to a procedure that circumvents the acts of Congress, the

decisions of the Supreme Court of the United States, and, indeed, the decision of the Supreme Court of Tennessee."

This assertion is unsupported by any Tennessee decision cited by petitioners, or by any decision of the Supreme Court of the United States cited by them. It seems to be much the same kind of argument that was rejected by that Court in Amalgamated C. W. of A. v. Richman Bros., 348 U. S. 511, 518, 99 L. ed. 600, 609.

The petition for a rehearing is denied at petitioners' cost.

S. L. Felts,
Judge.

Office-Supreme Court, U.S.
FILED
AUG 13 1959
JAMES R. BROWNING, Clerk

No. 150

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

DOUGLAS MCCRARY, et al.

v.

ALADDIN RADIO INDUSTRIES, INC.

and

ALADDIN INDUSTRIES, INC.

On Petition for a Writ of Certiorari to the Court of Appeals of Tennessee, Middle Section, at Nashville

BRIEF FOR RESPONDENTS IN OPPOSITION

DICK L. LANSDEN
WILLIAM WALLER
1200 American Trust Bldg.
Nashville 3, Tennessee
Attorneys for Respondents

Of Counsel:

WALLER, DAVIS & LANSDEN
1200 American Trust Bldg.
Nashville 3, Tennessee

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Questions Presented	1
Statement	3
Argument	5
1. The Chancery Court Had Power to Punish the Violation of Its Injunction Irrespective of How the Pre-Emption Question Should Be Decided; and the Decision to This Effect Is in Accord With Prior Tennessee Decisions	5
2. The National Labor Relations Act Did Not Pre-Empt the Field so as to Deprive the Chancery Court of Jurisdiction to Enforce the State Law of Common Carriers	10
Conclusion	17

TABLE OF CASES

Amalgamated Clothing Workers v. Richman Bros. Co., 348 U.S. 511, 516	7
American Federation of Musicians v. Stein, (C.C.A. 6, 1954) 213 F. 2d 679	6
Amey v. Colebrook Guaranty Savings Bank, (C.C.A. 2, 1937) 92 F. 2d 62	6
Automobile Workers v. O'Brien, 339 U.S. 454	12
Bus Employees v. Wisconsin Board, 340 U.S. 383	12
Capital Service, Inc. v. Labor Board, 347 U.S. 501	17
Cohens v. Virginia, 6 Wheat. 264, 399	8
Fox Film Corp. v. Muller, 296 U.S. 207	9
Galveston, H. & S. A., Ry. Co. v. Wallace, 223 U.S. 481	13, 15
Garner v. Teamsters Union, 346 U.S. 485, 501	9, 12
General Drivers v. American Tobacco Co., 348 U.S. 978	6
Guss v. Utah Labor Board, 353 U.S. 1, 10	12
Hill v. Florida, 325 U.S. 538	12
Humphrey's, Executor v. U. S., 295 U.S. 602, 626	16, 17
International Assn. of Machinists v. Gonzales, 356 U.S. 617	15

Page

Minnesota v. National Tea Co., 309 U.S. 551 3
National Association for The Advancement of Colored People v. Alabama, 357 U.S. 449 8
Robb v. Connolly, 111 U.S. 624, 637 11
San Diego Building Trades Council v. Garmon, 359 U.S. 236 ..... 12, 13, 15, 16
Shriver v. Woodbine Savings Bank, 285 U.S. 467 15
Teamsters, C. H. & T. D. v. Kerrigan Iron Works, Inc., 353 U.S. 968 ..... 3, 4, 6, 16, 17
United Automobile Workers v. Russell, 356 U.S. 634 .. 15
United Mine Workers v. Arkansas Oak Flooring Co., 351 U.S. 62, 75 14
United States v. Mine Workers of America, 330 U.S. 258 ..... 6, 7
U. S. v. Bank of New York, 296 U.S. 463, 479 11
Weber v. Anheuser-Busch, Inc., 348 U.S. 468, 481 ....9, 12
Weidner v. Friedman, 126 Tenn. 677 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 150

DOUGLAS MCCRARY, et al.

v.

ALADDIN RADIO INDUSTRIES, INC.

and

ALADDIN INDUSTRIES, INC.

On Petition for a Writ of Certiorari to the Court of Appeals of Tennessee, Middle Section, at Nashville

---

BRIEF FOR RESPONDENTS IN OPPOSITION

QUESTIONS PRESENTED

The "questions presented" as framed in the petition for certiorari are not, except in minor part, questions actually presented on the record. There was no mandatory injunction to compel truck drivers to cross

a picket line. No injunction was sought or obtained against any labor union or any member thereof, and there was no allegation of collective activity, concerted action, or unfair labor practice. The bill seeking the injunction raised no issue under Section 7 or Section 8(b)(4), or any other provision of the National Labor Relations Act, as amended.[1]

The question actually presented is whether employees of common carrier truck lines may, with impunity, violate a temporary injunction issued by a state court requiring the carriers, "their officers, agents, employees . . . and or confederates," to render customary service to a manufacturing plant, at which a strike is being conducted. The injunction did not compel them to remain at work. So long as they remained at work, however, it was their duty, under the temporary injunction, as employees of the common carrier, to pick up and deliver freight at the manufacturing plant in question without discrimination. The question is whether or not the injunction was void.

The question may be divided as follows:

(1) *On the assumption* that, when a hearing eventually takes place,[2] the temporary injunction should be dissolved, and a permanent injunction refused on the ground that the National Labor Relations Act has preempted the field of common carrier law with respect to service to plants at which there may be a picket line, does it follow that the state court is powerless to punish

[1] 49 Stat. 452 (1935) as amended; 29 U. S. C., sections 151 et seq.

[2] The injunction suits have remained in *statu quo*, by agreement, pending the disposition of the contempt proceedings. While there are two suits, and two injunctions, the singular phraseology is used in the brief for the sake of simplicity.

a violation of the injunction while it remains in effect? And in giving a negative answer to this question, did the Tennessee Court of Appeals depart from settled Tennessee procedure so as to deprive petitioners of their rights under the Fourteenth Amendment?

(2) Is the assumption on which the former question was predicated a valid one,— that is to say, has the National Labor Relations Act actually pre-empted the field of common carrier law to that extent?

It is believed that the pre-emption question will not be reached by the Court in this case because no matter how that question should be decided, the temporary injunction was not void and, under Tennessee law, it could not be violated with impunity. If this is an adequate non-federal ground for the decision, the pre-emption issue becomes irrelevant.

STATEMENT

By order entered at the October term, 1957, in No. 116 (355 U. S. 8), a former petition for certiorari in these cases was granted and the cases remanded "for consideration in light of *Teamsters, C. H. & T. D.* v. *Kerrigan Iron Works, Inc.*, 353 U. S. 968." The remand was doubtless to enable the Tennessee Court of Appeals to clarify the basis for its decision, as in *Minnesota* v. *National Tea Co.*, 309 U. S. 551. This consideration in the light of the *Kerrigan* case has taken place and the Tennessee Court of Appeals has held that the *Kerrigan* case is distinguishable on two grounds and is inapplicable.[3] In *Kerrigan* the validity

[3] The opinion on remand is copied in Appendix A to the petition (Pet. 21-35) and correctly sets forth the facts. The petition repeats inaccuracies in the earlier petition, to which attention was called in the "Memorandum for Respondents" in answer thereto, No. 976, October Term 1956.

of an injunction against a labor union was involved, based in part on allegations of unfair labor practice. In the instant case there was no injunction against a labor union and there were no allegations of unfair labor practice. In *Kerrigan* the validity of a permanent injunction was directly involved. In the instant case the validity of the injunction, which was a temporary injunction, is not directly involved, but only collaterally. The issue here is the validity of judgments for contempt imposed separately upon some eighteen truck drivers and upon a local labor union and its president for conduct designed to prevent compliance with the temporary injunction. The decision of this issue depends upon whether the temporary injunction was void, as petitioners claim, or valid (or at most merely voidable, and proof against collateral attack) as respondents claim. The solution of that question turns mainly on Tennessee equity law.

The opinion of the Court of Appeals filed August 6, 1958 holds that the Chancellor had jurisdiction to grant a temporary injunction, based on the allegations of the bill before him (which raised no issue of collective activity, concerted action or unfair labor practice), and to punish for violation, irrespective of whether or not the Chancellor might later hold, on a further hearing, that the National Labor Relations Act had pre-empted the field of common carrier law as respects service to plants at which there are picket lines. The Court of Appeals further held that the subject matter of the suit was not pre-empted by the federal act and was within the jurisdiction of the Tennessee Chancery Court. For both reasons the Court held that the *Kerrigan* case was inapplicable, and re-affirmed the judgments holding the petitioners in contempt.

The petitioners on August 16, 1958 filed a petition to rehear, contending that the Court of Appeals had ignored prior Tennessee law to the effect that an injunction is void if the court issuing the injunction is without "jurisdiction." The Court of Appeals denied the petition to rehear,[4] stating that under Tennessee law the Chancellor "had jurisdiction to determine the issues, including that of his own jurisdiction, and to grant the temporary injunction to preserve the *status quo* pending such determinations, and to punish defiance of it as contempt." (Pet. 43).

ARGUMENT

1. The Chancery Court Had Power to Punish the Violation of Its Injunction Irrespective of How the Pre-Emption Question Should Be Decided; and the Decision to This Effect is in Accord With Prior Tennessee Decisions.

The Court of Appeals was correct in holding that the Chancellor had jurisdiction to issue the temporary injunction and to punish its violation irrespective of the pre-emption question. Petitioners' argument illustrates the common fallacy of equivocation or the "ambiguous middle." Because orders are void where entered by a court without "jurisdiction," in *one* sense of the word, the argument is that orders entered by a court without "jurisdiction," in *any* senses of the word, are likewise void.

"Jurisdiction" is derived from "juris" and "dico"—"I speak by the law." "Lack of jurisdiction" is frequently said to consist either (1) in the court's total want of power to act at all, or (2) lack of power to act in a particular case because of the absence of conditions essential to exercising jurisdiction.

[4] The opinion is copied in Appendix B to the petition. (Pet. 36-44).

Forbearance by a court from exercising its powers to the fullest possible extent may also be called "lack of jurisdiction," as pointed out by Circuit Judge L. Hand in *Amey* v. *Colebrook Guaranty Savings Bank*, (C. C. A. 2, 1937) 92 F. 2d 62. Whether or not a court has "jurisdiction" in a particular case may depend upon the decision of intricate, novel, and disputed questions of law and fact. An illustration is the jurisdiction of the United States district courts in diversity cases. See *American Federation of Musicians* v. *Stein*, (C. C. A. 6, 1954) 213 F. 2d 679, where the Court of Appeals held that a District Court, sitting in Tennessee, had jurisdiction to issue a temporary injunction to preserve the *status quo* while determining whether or not diversity of citizenship existed,—a question which could be determined only after the taking of evidence. Similarly, in *United States* v. *Mine Workers of America*, 330 U. S. 258, the question of jurisdiction depended upon the construction of the Norris-LaGuardia Act. The Court held that even if the Act were applicable; the District Court "had the power to issue a restraining order for the purpose of preserving existing conditions pending a decision upon its own jurisdiction." Having such power, the District Court also had the power to punish disobedience of its order.

In *United States* v. *Mine Workers*, the Court indicated that a different result would follow "were the question of jurisdiction frivolous and not substantial." (p. 293). It cannot be successfully contended in the instant case that the lack of jurisdiction of the Chancery Court was so well settled that any contention to the contrary was frivolous and not substantial. At the time the injunction was issued, the *Kerrigan* case had not been decided. The *per curiam* decision in *General Drivers* v. *American Tobacco Co.*, 348 U. S.

978, was rendered after the temporary injunction was issued, and upon being brought to the attention of the Chancellor, he went so far as to suspend the injunction until he was able to satisfy himself whether this decision deprived his court of jurisdiction. All petitions for contempt which had reference to conduct during the period the injunction was suspended were dismissed. Upon full consideration of *General Drivers* v. *American Tobacco Co.*, the Chancellor was of the opinion that it did not deprive him of jurisdiction, and he announced that in the future the injunctions would be strictly enforced. (Record, p. 108).

This is apparently the first case to come before this Court in which the contention is made that the National Labor Relations Act has deprived a state court of jurisdiction even though no labor union is a party and no unfair labor practice is alleged. In *United States* v. *Mine Workers*, the Court stressed the point that the applicability of the Norris-LaGuardia Act in such a case "had not previously received judicial consideration." Hence the problem was a substantial one. The present problem is equally novel. The Court has expressly recognized "the inadmissibility of the assumption that ascertainment of pre-emption under the Taft-Hartley Act is self-determining or even easy." *Amalgamated Clothing Workers* v. *Richman Bros. Co.*, 348 U. S. 511, 516.

A temporary injunction under Tennessee law, as well as under general law, "without determining any question of right," merely "preserves matters in *statu quo*." (Gibson's Suits in Chancery, 5th ed. section 848). Since it is well settled general law that a court has jurisdiction in a doubtful case to determine its own jurisdiction and to preserve the *status quo* pending further hearing, the petitioners in the instant case have

found it necessary to contend that, prior to the decision in the instant case, Tennessee law on this subject was peculiar and different, and that a new rule has been adopted in mid-stream, bringing the case within the ambit of *National Association for the Advancement of Colored People* v. *Alabama*, 357 U. S. 449. This contention was rejected as unfounded by the Court of Appeals in its opinion denying the petition to rehear. When general language cited by petitioners from opinions in former Tennessee cases is considered in the light of the facts in those cases, there is no conflict or inconsistency, as the Court of Appeals carefully explained. As said by Chief Justice Marshall in *Cohens* v. *Virginia*, 6 Wheat. 264, 399, "It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used."

In *Weidner* v. *Friedman*, 126 Tenn. 677, cited by the Court of Appeals, but ignored in the petition, the Chancery Court was held to have been "without jurisdiction" to enjoin the operation of "disorderly houses" at the suit of a private person, where there was no allegation of special and peculiar injury to the complainant, different in kind from that suffered by the general public. The Supreme Court of Tennessee held that the abatement of such a nuisance was for the Criminal Court, not the Chancery Court, and accordingly reversed the decree of the Chancellor on the merits for lack of jurisdiction, but at the same time sustained judgments for contempt.

The authority cited by the petitioners, Gibson's Suits in Chancery, 5th Ed. section 454, classifies void judgments and decrees as being those "that appear on the face of the record itself to have been rendered without jurisdiction of the parties or of the subject matter.

. . ." (Pet. 16). In the instant case the injunction was valid on its face, and in the language of the author, even if it was voidable it was "proof against collateral attack." (Pet. 16) In Footnote 58 (not quoted in the petition), the author cautions that while voidable judgments are sometimes miscalled "void," they are "valid until reversed by direct attack."

It has been recognized by this Court in cases involving the pre-emption doctrine that the jurisdiction of the state court must be determined from the pleadings. *Garner* v. *Teamsters Union*, 346 U. S. 485, 501; *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 481. There has been in the instant case no departure from settled principles. Petitioners are without basis for their contention that under Tennessee law, prior to the instant decision, an order of the Court was necessarily void if it were later held that the Court was without jurisdiction, although such lack of jurisdiction did not appear on the face of the record. If an injunction is void, it may be violated with impunity. But petitioners are in error in their assertion that it has ever been the law in Tennessee that a temporary injunction is necessarily void whenever the Court which issued it lacked "jurisdiction" in *any* sense of that word. Petitioners are in the peculiar position of arguing that the *Tennessee appellate courts* have not correctly decided a question of *Tennessee law*.

The decision of the Tennessee Court of Appeals rests solidly on the adequate non-federal ground that a temporary injunction which is not void must be obeyed while it is in force, and that under Tennessee law (as well as under federal law) this injunction was not void. Accordingly the petition for certiorari should be denied without the necessity of considering the question of pre-emption. *Fox Film Corp.* v. *Muller*, 296 U.S. 207.

2. The National Labor Relations Act Did Not Pre-Empt the Field so as to Deprive the Chancery Court of Jurisdiction to Enforce the State Law of Common Carriers.

The pre-emption question may be stated as follows: What should the decision of the Chancery Court be if, on final hearing, the petitioners herein, having intervened or asked leave to intervene as defendants, should move for a dismissal of the complaint on the ground that the Chancery Court has no jurisdiction to *entertain* the application for a permanent injunction?[5] If the answer to the question is pertinent to the decision of the case now before this Court, it is submitted that the hypothetical motion to dismiss the complaint on this ground should be denied.

Petitioners seem to argue, in effect, that the common carrier defendants in the Chancery Court proceeding are at liberty, through the device of employing truck drivers who are members of a labor union, and of agreeing with the labor union that the truck drivers need not cross picket lines, to nullify the state law applicable to common carriers, which requires non-discriminatory service. It is submitted that the National Labor Relations Act does not so provide and should not be so construed. But a decision on that issue would be within the jurisdictional competence of the Chancery Court, if the question were properly raised. It would not be incumbent on that Court to dismiss the case for want of jurisdiction merely because the question is raised. The Tennessee Chancery Court has jurisdiction to construe federal as well as

[5] Whether the permanent injunction should issue, and if so, how it should be framed so as to protect privileges of employees, are questions which do not arise here. Until a permanent injunction is issued, or the bill dismissed, there will be no final judgment to be reviewed.

state law, and to resolve conflicts between them. *Robb v. Connolly*, 111 U. S. 624, 637; *U. S. v. Bank of New York*, 296 U. S. 463, 479.

Petitioners' argument runs, however, that although, in general, a state court has jurisdiction to decide matters of federal law, this is not true with respect to the National Labor Relations Act. The argument seems to run that, on the final hearing of the case, facts and circumstances might conceivably be proved which would be relevant if an issue under Section 7 or Section 8 of the Act were present. The argument implies that even though the pleadings now contain no allegations of such facts or circumstances, the possibility of later amendment is sufficient to deprive the court of jurisdiction under recent decisions of this Court.

One complete answer to the argument is that given by the Court of Appeals (Pet. 30) where, after pointing out that the petitioners stated, both in their answers and on the witness stand, that the truck drivers had acted individually and not in concert, it is said:

> "Since the acts of each of the individual appellants in defiance of the temporary injunction were separate and individual acts, and not 'concerted activity', we understand they could not be a 'concerted activity' within the protection of sec. 7 of the federal Act. *N. L. R. B. v. Illinois Bell Tel. Co.* (7 C. C. A.), 189 Fed. 2d 124, 127-129. Nor could such acts of these individuals, unconnected with any union, be a union unfair labor practice under sec. 8(b)(4) of that Act, which by its terms applies only to a 'labor organization or its agents'."

But even if the petitioners were free as intervenors to assert that they engaged in concerted action, and to

invoke the protection of Section 7, the Chancery Court would not be deprived of jurisdiction. The case involves the duties of common carriers, and the possibility that an overlap from the field of labor law might occur at a later stage would not deprive the court of jurisdiction to render a decision. This becomes clear when consideration is given to the bases on which Taft-Hartley pre-emption rests. There are two such bases, each separate and distinct from the other:

(1) In the field of substantive law, Congress has pre-empted certain areas of regulation with respect to labor-management relations, thereby excluding the enforcement of state laws in the same areas. *Automobile Workers* v. *O'Brien*, 339 U. S. 454; *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383; *Hill* v. *Florida*, 325 U. S. 538; *Weber* v. *Anheuser-Busch, Inc., supra*, and cases there cited.

(2) Congress has also provided the exclusive remedies for the enforcement by the aggrieved party of the rights created by the Act. *Garner* v. *Teamsters Union*, 346 U. S. 485. Even if the Board refuses jurisdiction, an "inescapable implication of exclusiveness," is found in the proviso to Section 10(a), added to the Act in 1947, whereby the Board is authorized to cede jurisdiction over the prevention of an unfair labor practice to a state agency under certain conditions. *Guss* v. *Utah Labor Board*, 353 U. S. 1, 10. It follows that a state agency cannot obtain jurisdiction over the prevention of an unfair labor practice affecting interstate commerce except by cession of jurisdiction, and cannot award damages on account of an unfair labor practice. *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236.

In the instant case we are concerned only with the question of remedy. Neither in the proviso of Section 10(a) nor in any other provision of the Act is there a remedy provided against discrimination by common carriers. Hence the argument that statutory remedies are exclusive is beside the point. Although petitioners cite and rely upon *San Diego Building Trades Council v. Garmon, supra*, the decision does not support their argument. There the California substantive law was inapplicable because interstate commerce was affected, and because the federal Act had pre-empted the field. But this fact alone did not oust the California court of jurisdiction to decide whether an unfair labor practice under federal law had been committed. Jurisdiction of the state court was found to have been withdrawn, not because Congress had pre-empted the field of unfair labor practices affecting interstate commerce, but because the federal Act had also expressly provided the remedy to be pursued by the aggrieved party.

The applicable principle was stated and applied in *Galveston, H. & S. A. Ry. Co. v. Wallace*, 223 U.S. 481, where it was contended that a state court had no jurisdiction to enforce a right of action arising under the Carmack Amendment to the Interstate Commerce Act. In denying this contention, the Court said (p. 490):

> "... Where the statute creating the right provides an exclusive remedy, to be enforced in a particular way, or before a special tribunal, the aggrieved party will be left to the remedy given by the statute which created the right. But jurisdiction is not defeated by implication. And, considering the relation between the Federal and the state Government, there is no presumption that Congress intended to prevent state courts from exercising the general jurisdiction already pos-

sessed by them, and under which they had the power to hear and determine causes of action created by Federal statute. *Robb* v. *Connolly*, 111 U. S. 624, 637."

In the instant case the respondents are not seeking to enforce a right created by federal statute. They seek merely to enforce the general law respecting the duties of common carriers. Apparently recognizing the weakness of their position, the petitioners, in their former petition for certiorari, asserted as one of the questions involved (and in this petition they say that it is still involved, although no supporting argument is presented) that the Interstate Commerce Act[6] had pre-empted the field so as to deprive the Chancery Court of jurisdiction. But Section 22 of that Act expressly disclaims an intent in any way to "abridge or alter the remedies now existing at common law or by statute." Congress having been thus at pains to remove any question as to the jurisdiction of state courts to enforce the duties of common carriers, it would be an anomaly indeed if it intended to deprive them of that same jurisdiction through the enactment of legislation dealing not with carriers but with an entirely different subject matter.

Petitioners assert (Pet. 13, Footnote 17) that the decision below is contrary to *United Mine Workers'* v. *Arkansas Oak Flooring Co.*, 351 U. S. 62, 75. In that case a union, which had not filed the data or affidavits required by Section 9 of the Act, picketed the premises of the employer to obtain recognition, and the employer obtained an injunction in the state court, not on the theory of unfair labor practice, but on the theory that recognition of a non-complying

[6] 24 Stat. 379 (1887) as amended; 49 U. S. C., section 1, et seq.

union "would be illegal and that picketing to secure it, therefore, was subject to restraint by a state court." (351 U. S. 68). The decision of the Supreme Court of Louisiana sustaining a permanent injunction was reversed by this Court on the ground that, as a matter of substantive law, the state court should have sustained the union's defense that, under Section 7 of the Act, the picketing was a protected activity. This Court assumed without question that the state court had jurisdiction to decide the case on its merits.

In each of the other cases relied upon by petitioners, the moving party alleged an unfair labor practice. On the other hand, in *International Assn. of Machinists* v. *Gonzales*, 356 U. S. 617, the gravamen of the action was the illegal expulsion of the plaintiff from membership in a union in violation of his rights under the union constitution and by-laws. No charge of unfair labor practice appeared in the petition by which the state court's jurisdiction was invoked. The Court held that the power of the state court to order reinstatement in the union and to award damages for breach of contract was not precluded by the fact that the union's conduct might also involve an unfair labor practice.[7] In the *San Diego* case the Court referred to *Gonzales* as involving the power of a state to regulate "where the activity regulated was a merely peripheral concern of the Labor Management Relations Act."

[7] The Court pointed out that although "the Board might possibly have been empowered to award back pay, in no event could it mulct in damages for mental or physical suffering." (356 U.S. 621). Cf. *Shriver* v. *Woodbine Savings Bank*, 285 U. S. 467, holding that the inadequacy of a statutory remedy is itself persuasive that it was not intended to be exclusive, where the statute does not state that it is exclusive. Neither this case nor *Galveston H. & S. A. Ry. Co.* v. *Wallace*, *supra*, has been cited by the Court in any of the Taft-Hartley pre-emption decisions.

The same characterization is fitting here. The duties of common carriers are, at most, a peripheral concern of that Act.

In *United Automobile Workers* v. *Russell*, 356 U. S. 634, this Court upheld the power of an Alabama court to award damages to a non-union employee for malicious interference by the union with his lawful occupation by preventing him from entering the plant where he was employed, notwithstanding the fact that the plaintiff alleged violation of Section 8(b)(1)(A) of the federal Act. In the *San Diego* case this decision was explained on the basis that "the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, we could not infer that Congress had deprived the States of the power to act."

In this country there is no more deeply rooted interest than access to common carriage. To repeat what was said in our reply to the former petition for certiorari in this case: "In an economy established upon the land, access to the highway came to be a right of first importance. If a man owned a tract of real property completely surrounded by holdings of others, the common law gave his an easement which secured to him access to and egress from his own property. In an economy based upon commerce, a person, natural or corporate, must have access to common carriage if he is to carry on. From the days when the term first entered the language it has been a principle of the law that common carriage shall be available to all, free from discrimination in service and in charges . . ."

Except for such general expressions as "the exclusive primary competence of the Board," there is

nothing in the *San Diego* opinion which gives the slightest support to the theory of petitioners that a state court, which has rightfully assumed jurisdiction, on the basis of the original pleadings, of a case involving solely the duties of common corriers, must refuse to proceed with the case for lack of jurisdiction if and when a question of labor law is subsequently injected, or because of the possibility that such a question might be injected. There is no "compelling congressional direction" for such an extension of implied federal pre-emption,—a branch of the law in which, perhaps more than in any other, a frequent recurrence to fundamental principles is essential. If expressions "beyond the point involved" in the opinion in one case were now to be used as stepping stones to the decision of another (the approach of the present petition for certiorari), a "doctrinaire and perverse application of the supremacy clause," to use the language of a distinguished scholar in the field,[9] might eventually result.

CONCLUSION

The earlier petition for certiorari in this case was granted because of surface similarities between this case and the *Kerrigan* case. The carefully reasoned opinion of Judge Felts, speaking for the Tennessee Court of Appeals on the remand, has pointed out that there are also essential differences. His opinion in

[8] *Humphrey's Executor* v. *U. S.*, 295 U. S. 602, 626.

[9] Bernard D. Meltzer, "The Supreme Court, Congress and State Jurisdiction over Labor Relations," 59 Col. L. Rev. 6, 24. The article points out (pp. 16-25) the inappropriateness of a concept of "primary jurisdiction" in the labor-management area. Such a concept would be impossible to apply in a case such as the present one, where the procedure of *Capital Service, Inc.* v. *Labor Board*, 347 U.S. 501, could not be followed for lack of statutory authority.

response to the petition to rehear has clearly demonstrated that under Tennessee law, as well as under federal law, a temporary injunction may or may not be void where the Court had no "jurisdiction" over the subject matter of the case, depending upon the pleadings and circumstances of the case and upon the sense in which "jurisdiction" is used. The Court has held that the temporary injunction in this case was not void, and could not be violated with impunity, irrespective of whether or not the Court correctly applied the preemption doctrine. The Court has given its reasons why the National Labor Relations Act leaves the Tennessee courts free to decide the main case on its merits, after disposing of the ancillary proceedings here involved. It is submitted that these opinions correctly state the law, and that the petition for certiorari should be denied.

Respectfully submitted,

DICK L. LANSDEN
WILLIAM WALLER
1200 American Trust Bldg.
Nashville 3, Tennessee
Attorneys for Respondents

Of Counsel:

WALLER, DAVIS & LANSDEN
1200 American Trust Bldg.
Nashville 3, Tennessee

FILE COPY

Office-Supreme Court, U.S.
FILED
AUG 29 1959
JAMES R. BROWNING, Cle

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 150.

DOUGLAS McCRARY et al.

v.

ALADDIN RADIO INDUSTRIES, INC.,
and
ALADDIN INDUSTRIES, INC.

MEMORANDUM REPLY BRIEF

In Support of Petition for Writ of Certiorari.

ALBERT WILLIAMS,
1101 Stahlman Building,
Nashville, Tennessee,
CECIL D. BRANSTETTER,
4 Stahlman Building,
Nashville, Tennessee,
JEROME A. COOPER,
1329 Brown-Marx Building,
Birmingham 3, Alabama,
Counsel for Petitioners.

WILLIAMS, HARWELL, HOWSER & THOMAS,
1101 Stahlman Building,
Nashville, Tennessee,
MOORE, CROWNOVER, BRANSTETTER, FOLK & FISHER,
4 Stahlman Building,
Nashville, Tennessee,
COOPER, MITCH, BLACK & CRAWFORD,
1329 Brown-Marx Building,
Birmingham, Alabama,
Of Counsel.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

INDEX.

Page

Respondents admit that under the law of Tennessee, "If an injunction is void, it may be violated with impunity" 1

Certificate of service 5

Cases Cited.

Amalgamated Assn., etc., v. WERB, 340 U. S. 383, 394, 398, 399 ..... 2, 4

Garner v. Teamsters, 346 U. S. 485, 490 2

Nashville Corp. v. United Steelworkers of America, 187 Tenn. 440 2

National Ass'n for the Advancement of Colored People v. State of Alabama, 357 U. S. 449 4

Teamsters v. Kerrigan, 353 U. S. 968 ..... 2, 3

Weidner v. Friedman, 126 Tenn. 677 2

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 150.

DOUGLAS McCRARY et al.

v.

ALADDIN RADIO INDUSTRIES, INC.,
and
ALADDIN INDUSTRIES, INC.

MEMORANDUM REPLY BRIEF

In Support of Petition for Writ of Certiorari.

Petitioners respectfully request that the following reply be filed to the "Brief for Respondents in Opposition:"

I.

Respondents Admit That Under the Law of Tennessee, "If an Injunction Is Void, It May Be Violated With Impunity."

This quoted admission appears on page 9 of the "Brief for Respondents in Opposition." It accords both with

the initial understanding of the parties in this proceeding and with traditional Tennessee practice and authorities.[1]

Thus the ultimate issue that emerges in this proceeding is whether the injunction of the Tennessee Chancellor was in fact void. Clearly, it was.

We respectfully suggest that whether a decree of the Tennessee Chancellor—affecting and regulating peaceful picketing in a labor dispute at an interstate industry and prohibiting the exercise of a contractual privilege to respect such picketing—is to be given any effect, or is to be treated as "invalid" or void, is not for Tennessee to decide.[2] The preemptive scheme for regulation of such activities as enacted by Congress and applied by the decisions of this Court governs that issue.[3] Such was the effect of this Court's prior opinion and judgment. 355 U. S. 8.[4]

---

[1] This admission explains respondents' inability to cite cases in Tennessee to the contrary. Neither *Weidner v. Friedman*, 126 Tenn. 677, nor *Nashville Corp. v. United Steelworkers of America*, 187 Tenn. 440 (to which respondents have referred) deals with a decree of a Tennessee Court that was deemed void. In the one, the decree was found to be erroneous because the Appellate Court felt that the Chancellor should have exercised forbearance in the exercise of equity powers (Cf. page 6, Brief for Respondents in Opposition), *and* because relief was barred by laches; in the other, no challenge to the jurisdiction of the Chancellor over the subject matter was involved—only a questioning of his exercise of equity authority as "irregular or erroneous."

The Court of Appeals' opinion itself, while not entirely clear on this point, apparently recognized that "a void injunction binds no one. . . ." (See, Opinion, at page 31 of the Petition herein.)

[2] *Amalgamated Ass'n, etc. v. WERB*, 340 U. S. 383, 398.

[3] Otherwise, the "diversities and conflicts" which Congress sought to avoid would be inevitable. *Garner v. Teamsters*, 346 U. S. 485, 490.

[4] See, also, *Teamsters v. Kerrigan*, 353 U. S. 968, and related decisions of this Court cited in "The Reasons for Granting the Writ" (page 13 of the Petition herein).

A basic error here has been the Tennessee Court's failure to find the injunction void as a matter of overriding federal law. That failure largely derives from the State Court's untenable attempt to distinguish **Kerrigan.**[5] It reflects that Court's intransigent refusal to concede that the National Labor Relations Act as amended has pre-empted this case from State jurisdiction, even though its earlier refusal so to concede has been vacated and remanded by this Court.

II.

The injunction here is no less void because it was temporary and not final. The essence of the doctrine of preemption is that federal rights be protected against encroachment by State Courts while those rights may yet be effective.[6]

When, as here, State law admittedly permits a void injunction to be violated with impunity; and when such a State Court injunction is void because it invades the

---

[5] Our Memorandum Reply Brief in No. 976, October Term, 1956 (Appendix A thereto), detailed the substantial identity between *Kerrigan* and the present case. We noted there (page 6): "The present case and the *Kerrigan* case are substantially identical. The same Local 327 and its members, and the same collective bargaining provisions insuring the right to respect peaceful picket lines, are involved in both cases. In both there has been the same invasion by the State Chancellor of an area pre-empted by Congress.

"The same Tennessee Chancellor issued the challenged orders in both cases, under the identical misconception in both that (by enforcement of a Tennessee policy applicable to common carriers) he could forbid, or impose punishment for, peaceful picketing in an interstate industry."

[6] Almost universally in labor disputes, the preliminary proceedings for all practical purposes are crucial and determinative.

Petitioners have made no agreement, as is indicated in footnote 2, page 2, Brief for Respondents in Opposition, for continuing the injunction suits "in *statu quo*," or otherwise.

field of peaceful picketing in industries affecting commerce which Congress "has closed to State regulation," a judgment for contempt of that injunction "cannot stand," and it is immaterial that the void decree is a temporary injunction or restraining order. **Amalgamated Assn., etc. v. WERB**, 340 U. S. 383, 394, 399.

III.

In summary, Tennessee has simply refused, once more, to apply federal law of preemption by which this suit has been withdrawn from the State's power.

Kerrigan supported the granting of the first writ in this proceeding. It likewise, now, we respectfully submit, again supports the granting of the writ and justifies summary disposition.

IV.

There is, of course, other substantial error in the result below of a degree and kind that would authorize review by this Court. Respondents admit (and the Court of Appeals assumes) that a void injunction in Tennessee may in general be disregarded with impunity. They both deny, however, that **this** particular injunction could be so disregarded by these petitioners. If, as we have shown, this injunction is void (by virtue of federal law), to refuse petitioners the right to disregard it would amount to a novel and unequal application of Tennessee procedure and law to them in violation of the Constitution's requirement of fairness and equal treatment. **National Ass'n for the Advancement of Colored People v. State of Alabama**, 357 U. S. 449.

V.

The writ of certiorari should be granted and the judgment of the Court of Appeals of Tennessee reversed.

Respectfully submitted,

By.....

ALBERT WILLIAMS,
1101 Stahlman Building,
Nashville, Tennessee,
CECIL D. BRANSTETTER,
4 Stahlman Building,
Nashville, Tennessee,
JEROME A. COOPER,
1329 Brown-Marx Building,
Birmingham 3, Alabama,
Counsel for Petitioners.

WILLIAMS, HARWELL, HOWSER & THOMAS,
1101 Stahlman Building,
Nashville, Tennessee,
MOORE, CROWNOVER, BRANSTETTER, FOLK & FISHER,
4 Stahlman Building,
Nashville, Tennessee,
COOPER, MITCH, BLACK & CRAWFORD,
1329 Brown-Marx Building,
Birmingham, Alabama,
Of Counsel.

Dated: August ..., 1959.

Certificate of Service.

I, Jerome A. Cooper, one of the attorneys for petitioners herein, and a member of the Bar of the Supreme Court of

the United States, hereby certify that a copy of the foregoing Memorandum Reply Brief in Support of Petition for Writ of Certiorari was this day served on adverse parties herein in accordance with Supreme Court Rules 21 (1) and 33, by depositing same in the U. S. Mails at Birmingham, Alabama, with first class postage prepaid, addressed to counsel of record at their post office address as follows:

Waller, Davis & Lansden,
American Trust Building,
Nashville, Tennessee.

.....

Dated August ..., 1959.